



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,098	03/15/2004	Robert S. Melesko	033327.0017	9262
7590 Thomas F. Bergert Williams Mullen, PC Suite 700 8270 Greensboro Drive McLean, VA 22102				
			EXAMINER McCULLOCH JR, WILLIAM H	
			ART UNIT 3714	PAPER NUMBER
			MAIL DATE 09/30/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/801,098

Applicant(s)

MELESKO ET AL.

Examiner

William H. McCulloch

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-19 and 21-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-19 and 21-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on 7/16/2008 and 9/24/2008 have been entered. Claims 1-6, 8-19, and 21-31 are pending in the application, with claims 1-6, 8, 10-12, 14-19, 21, 23, 25, and 27-31 currently amended, and claims 7 and 20 cancelled.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6, 8-19, 21-26, 28-29, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 6,267,670 to Walker et al. (hereinafter Walker).

Regarding claims 1, 14, and 29, Walker teaches a transaction processing device and method for conducting a lottery comprising:

- A first POS terminal (POS terminal 30) having a CPU (CPU 31) and a display (display device 31; see at least fig. 3);

- A network (e.g., the Internet; see at least 5:24-35) facilitating electronic communications between the first POS terminal, a lottery management and transaction processing system (e.g., lottery data processing system 60), and one or more third party application providers (the Examiner notes that this limitation does not require a third party application provider, but rather a network facilitating connection to one or more providers—the Internet connection described by Walker meets such a limitation);
- Wherein the lottery management and transaction processing system includes a gaming platform services layer hosting a plurality of available lottery games selectable by a user of the first POS terminal (It is noted that the recited “gaming platform services layer” is not a physical component, but rather a logical data abstraction performing a particular function. The function of “hosting a plurality of available lottery games selectable by a user of the first POS terminal is taught by Walker in at least 6:24-31),
- And wherein the gaming platform services layer is in communication with an application layer that can receive at least one third party game application which can be selected by a user of the first POS terminal (It is noted that the recited “application layer” is not a physical component, but rather a logical data abstraction performing a particular function. The function of receiving “at least one third party game application which can be selected by a user of the first POS terminal” is taught by Walker in at least 6:24-31);

- Retailer software operable by said CPU for displaying a first interface associated with at least one non-lottery-related retailer function on said first POS terminal display (e.g., purchase of groceries; see at least 6:24-31 and Fig. 9); and
- Lottery software operable by said CPU for displaying a second interface associated with at least one lottery-related retailer function on said first display (see at least 6:24-31), and wherein the second interface allows selection, by a user of the first POS terminal, of a game offering hosted by the gaming platform service layer (see at least 6:24-31).

Further regarding claims 1, 14, and 29, because Walker's invention includes modification of existing equipment, the Examiner interprets Walker's software as a "third party" application because neither the customer nor the grocery store is a party to Walker directly. Finally, the third party application is provided via the network at least because it requires communication between the POS terminals 30 and other controllers and/or servers discussed above.

Regarding claim 28, Walker describes a method of adapting a point-of-sale device to incorporate lottery transaction capabilities in at least 5:1-23 (see also explanation of claims 1 and 14). It is noted that the recited "lottery transaction processing engine" is not a physical component, but rather a logical data abstraction performing a particular function. The function of "providing at least one lottery transaction option selectable by the lottery transaction interface" is taught by Walker in at least the functionality of the lottery data processing system 60.

Regarding claim 31, the Examiner interprets a "self-service, browser-based point-of-sale device" as Walker's POS terminal 30 since "self-service" is functional language and its structure is capable of use by any individual. Furthermore, if a cashier or clerk wishes to purchase tickets in the system of Walker, it is clear that he could operate a POS terminal to make such a purchase. There is no demonstrable structural difference between the terminal of the claimed invention and that of Walker.

Regarding claims 2, 4, 15 and 17, Walker teaches a first POS terminal provided with memory and both retailer software and lottery software stored in and operable from said memory (see at least 6:24-31).

Regarding claims 3 and 16, Walker teaches wherein said retailer software is stored on a retailer controller in communication with said terminal and operable by said CPU for display on said display device (e.g., in-store servers; see at least 5:1-23 and 5:37-49).

Regarding claims 5-6 and 18-19, Walker teaches lottery software is operable by said CPU for display on said first POS terminal display (e.g. POS terminal 30; see at least 5:1-23), said gaming platform services layer hosts a plurality of available lottery games that are playable by a user of the first POS terminal (see at least 6:24-31), and wherein the second interface allows for game play, by a user interacting with the first POS terminal, of a game offering hosted by the gaming platform services layer (see explanation of claim 1). Claims 6 and 19 state that the game is provided on a *second* POS terminal, as opposed to a *first* POS terminal recited in claims 5 and 18. Walker

teaches that multiple terminals are provided, each terminal performing substantially identical functions (see at least Fig. 1 and description thereof).

Regarding claims 8 and 21, Walker teaches wherein said second interface displays an interface associated with said selected game upon said selection being communicated to said gaming platform services layer (see at least figs. 8-10 and 8:11-9:9).

Regarding claims 9 and 22, Walker describes lottery software operable for managing lottery transactions and wherein the displayed [lottery-related] interface is taken from the group consisting of: lottery ticket purchase, validation, and game result query (see at least 6:24-31 and 11:29-45).

Regarding claims 10 and 23, Walker teaches a lottery management and transaction processing system facilitates processing of lottery transactions with a remote lottery host system (e.g., the lottery data processing system 60 which may be remote from the POS terminals).

Regarding claims 11 and 24, Walker teaches lottery tickets including a quick pick ticket and a draw ticket (see at least 9:44-49).

Regarding claims 12 and 25, Walker shows the POS terminal in operating communication with a printing device (e.g., printer 39).

Regarding claims 13 and 26, the Examiner interprets the recited "web browser" as a software application that enables a user to display information located on the Internet or a computer network. Since Walker describes an interface that displays

information on a computer network (see at least 4:59-67), Walker meets the claimed limitation of an interface displayed via a web browser.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 27 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of U.S. 2002/0062253 to Dosh, Jr. et al. (hereinafter Dosh).

Regarding claim 27, Walker teaches a system for processing lottery transactions substantially as described above. Regarding claim 30, Walker describes a lottery system as detailed above and further teaches a plurality of distributor server systems (e.g. POS controllers 20 or in-store servers), each having at least one browser-based point-of-sale device (POS terminal 30; see explanation of "web browser" in relation to claims 13 and 26) for processing lottery and non-lottery transactions, said distributor server systems being in operable communication with said network (see at least fig. 1 and 6:47-57).

Walker teaches the invention substantially as described above, but lacks in explicitly teaching a transaction handler for managing data exchange and communications with at least one third party application. In a related disclosure, Dosh teaches a Transaction Handler 16 software component that receives requests from the POS terminals 12 to upload loyalty transactions from the POS terminals 12 to a

database (see at least paragraph 115). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of Walker to include the transaction handler software of Dosh in order to provide a secure means of communication between third party software (e.g., Dosh's player loyalty program) and existing POS software, as is favorably described by Dosh.

Response to Arguments

6. Applicant's arguments filed 9/24/2008 have been fully considered but they are not persuasive.

On page 17 of the Remarks, Applicant argues that "Walker teaches away from the invention as claimed in amended claim 1" based on the allegation that while Walker manipulates POS software and in-store servers, the claimed invention apparently does not. The Examiner notes that both the claimed invention and that of Walker seek to augment existing POS systems to include the capability to provide lottery games to customers. No clear difference has been articulated by the Applicant in this matter with regard to the claimed invention. Regardless of whether "POS device providers are very hesitant to allow their software to be modified", as averred by Applicant, the invention of claim 1 is *anticipated* by Walker. The question of whether a reference "teaches away" from something is irrelevant when the reference anticipates it.

"The question whether a reference 'teaches away' from the invention is inapplicable to an anticipation analysis." *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998). See MPEP 2131.05. To the extent that Walker is used in a rejection under §103, the

Examiner notes that the particular features argued by the Applicant are also taught explicitly by Walker.

Applicant contends that Walker neither discloses nor suggests a system that allows a user to play a game from among several hosted games using a POS interface. The Examiner respectfully disagrees. Walker clearly teaches that customers may purchase whole or fractional lottery tickets, which may be "quick-pick" type tickets or customer selected type tickets (see at least 5:50-65, 6:24-31, and 9:44-49). The Examiner further notes that the customer is necessarily a user of the POS, even if he is being assisted by a clerk or cashier, because the customer is directing the operation of the device based upon his instructions. Specifically, when the customer is choosing whether he wants a quick-pick or a customer selected ticket (and respective numbers therefor), he is a user of the POS. Finally, even if the cashier is the only one to physically manipulate the POS, the cashier could just as easily be acting on his own behalf to purchase his own lottery tickets, which would make him a *user* of the device as argued by the Applicant. The salient point is that even assuming *arguendo* that the customer must physically enter commands in the POS, there is no structural difference imparted. Furthermore, this could not be seen as a patentable functional difference either because there is no requisite in the claimed or disclosed invention that a person must meet in order to operate a POS device.

Arguments directed toward application programming interfaces and the reference to Menon are moot in view of the new grounds of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. McCulloch whose telephone number is (571) 272-2818. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. H. M./
Examiner, Art Unit 3714
9/25/2008

/Corbett Coburn/
Primary Examiner
AU 3714